

West Valley City
Installation of Street-lighting at approximately 6200 S from Laurel Canyon
Drive to the end of the road.

THIS AGREEMENT is made this _____ day of _____, 2008, by and between West Valley City, a municipal corporation of the State of Utah (hereinafter the "City"), and Kelby Electric, Inc. a Utah Corporation (hereinafter "Contractor").

W I T N E S S E T H :

WHEREAS, 6200 South from approximately Laurel Canyon Drive to the end of the road lacks sufficient streetlighting; and

WHEREAS, as a result of the inadequate street lighting private property is frequently being damaged by graffiti; and

WHEREAS, in order to prevent further damage to property and to protect the health and welfare of the citizens living in this area the City intends to install streetlights; and

WHEREAS, the City desires to contract with a qualified contractor to install the streetlights; and

WHEREAS, the Kelby Electric is a qualified electrical contractor able to install the streetlights; and

NOW, THEREFORE, for and in consideration of the mutual covenants made herein, the parties agree as follows:

A G R E E M E N T :

1. Kelby Electric's Obligations.

- a. **The Work:** Contractor agrees to complete the work as provided in Exhibit A "Estimate." Said work will be performed in accordance with the 2007 APWA Specifications.
- b. **Compensation:** The compensation shall be paid as indicated in Exhibit A and represents the entire amount of compensation the City will pay the Contractor for the Project. Contractor will perform the aforementioned services in a professional manner using the degree of care and skill that is normally employed by Contractors on similar projects of equal complexity, practicing in the same locality, and at the date the Services are provided.

- c. **Project Schedule:** Contractor shall complete the project within six (6) weeks following execution of this Agreement.
- d. **Project Specifications:** The work shall be completed in compliance with the APWA Specifications 2007.

2. **CITY's Obligations.**

- a. In consideration for the work performed by Contractor, as set forth in Exhibit A to this Agreement, the City agrees to pay Contractor an amount not to exceed Fifty Thousand Dollars (\$50,000.00). Funds shall be paid to Contractor within thirty (30) days from receipt of invoice for work performed.
- b. The City will provide the Contractor with all the plans and specifications necessary to complete the public improvements.

3. **Term of Agreement.** This Agreement shall commence upon execution by the parties and shall continue for a period of not more than six (6) weeks, or until either of the following occurs:

- a. Contractor completes the work set forth in this Agreement.
- b. The City has paid Contractor the maximum compensation amount of Fifty Thousand Dollars (\$50,000).

The City and Contractor understand that time is of the essence and expect the work to be completed within six (6) weeks of the execution of this Agreement. However, the expected completion time may be extended in writing by the City, at the mutual agreement of the parties.

4. **Termination.**

- a. In the event Contractor fails to comply with any provisions of this Agreement, or if the progress or quality of the work is unsatisfactory, the City may serve written notice thereof upon Contractor, and if Contractor fails within a period of three (3) days thereafter to correct failure, the City may terminate this Agreement upon written notice to Contractor. Upon such termination, Contractor shall immediately cease its performance of this Agreement and the City shall determine and pay to Contractor the amount due for such satisfactory work up to the effective date of Termination. Conditions which may result in termination of this Agreement specifically include, but are not limited to, failure to comply with any applicable federal, state, or local laws or regulations. Notwithstanding the above,

Contractor shall not be relieved of liability to the City for damages sustained by virtue of any breach by Contractor.

- b. The City also reserves the right to terminate this Agreement at any time for its convenience, or in the event that it abandons or indefinitely postpones the program. Such terminations shall be accomplished by written notice to that effect, delivered to Contractor. Upon receipt of such notice, Contractor shall immediately cease work. Payment to Contractor shall be made for work performed prior to receipt by Contractor of such termination notice, together with Contractor's cost for closing down its work, and Contractor shall have no claim for loss of anticipated profits or any additional compensation.
 - c. In the event the City fails to substantially comply with the provisions of this Agreement, or if it fails to timely pay compensation due to Contractor, Contractor may serve written notice thereof upon the City, and, if the City fails within a period of seven (7) working days thereafter to correct such failure, Contractor may terminate this Agreement upon written notice to the City. Contractor accepts no liability for damages or delays that result from its suspension of work.
5. **CITY Representative.** The City hereby appoints Dan Johnson as the City's representative to assist in the administrative management of this Agreement.
6. **Additional Conditions.**
- a. City will furnish all applicable plans needed to complete the work.
 - b. Neither party shall be responsible to the other party for any special, incidental, indirect, penal or consequential damages (included lost profits) by either City or Contractor or for which either party may be liable to any third party.
7. **Independent Contractor.** It is understood and agreed that Contractor is an independent contractor, and that the officers and employees of Contractor shall not be employees, officers, or agents of the City; nor shall they represent themselves to be City employees; nor shall they be entitled, as a result of the execution of this Agreement, to any benefits or protections that would otherwise be available to City employees.
8. **Conflict of Interest.** Contractor warrants that no City employee, official, or agent has been retained by Contractor to solicit or secure this Agreement upon an agreement or understanding to be or to become an officer, agent, or employee of Contractor, or to receive a commission, percentage, brokerage, contingent fee, or any other form of compensation.

9. **Indemnification.** Contractor agrees to indemnify, and hold the City harmless from and against lawsuits, damages, and expenses, including reasonable court costs and attorney's fees, by reason of a claim and/or liability imposed, or claimed, and/or threatened against the City for damages because of bodily injury, death, and/or property damages resulting from the performance of services under this Agreement, to the extent that such bodily injuries, death, and/or property damages are attributable to the negligence of Contractor and/or Contractor's servants, agents, employees, and/or assigns. As used in this section, the City shall also refer to the officers, agents, assigns, volunteers, and employees of the City. The indemnification required by this section shall not apply to any bodily injuries, death, and/or property damages that are attributable to the negligence of the City.

Contractor will maintain insurance coverage throughout the term of the Agreement. Insurance coverage will include:

- | | | |
|----|-----------------------------------|-------------|
| 1) | Worker's Compensation | |
| | State | Statutory |
| | Employer's Liability | \$100,000 |
| 2) | Comprehensive General Liability | |
| | Bodily Injury and Property Damage | \$1,000,000 |
| | Combined Single Limit | \$1,000,000 |
| 3) | Automobile Liability | |
| | Combined Single Limit | \$1,000,000 |
| 4) | Professional Liability | \$1,000,000 |

10. **Subcontract Assignment.** This Agreement does not create any right or benefit to anyone other than City and Contractor, and neither party shall assign any rights or interest herein without prior written consent of the other party.
11. **Attorney's Fees.** In the event of default hereunder, the defaulting party agrees to pay all costs incurred by the non-defaulting party in enforcing this Agreement, including reasonable attorney's fees, whether by in-house or outside counsel and whether incurred through initiation of legal proceedings or otherwise.
12. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties.
13. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and no statement, promise, or inducements made by either party or agents for either party, which are not contained in this written Agreement, shall be binding or valid.

14. **Modification of Agreement.** This Agreement may be modified only by written amendment executed by all of the parties hereto.
15. **Applicable Law.** This Agreement shall be governed by the laws of the State of Utah.
16. **Notices.** All notices, requests, demands, and other communications required under this Agreement, except for normal, daily business communications, shall be in writing. Such written communication shall be effective upon personal delivery to any party or upon being sent by overnight mail service; by facsimile (with verbal confirmation of receipt); or by certified mail, return receipt requested, postage prepaid, and addressed to the respective parties as follows:

If to the Contractor: Kelby Electric, Inc.
Attn: Kevin Bateman
7323 South 3420 West
West Jordan, Utah 84084
Phone: (801)255-7171

If to the CITY: West Valley City Public Works Department
Attn: Erik Brondum, P.E., Transportation Engineer
3600 South Constitution Blvd.
West Valley City, Utah 84119
Telephone: (801) 963-3270
Facsimile: (801) 963-3540

Either party may change its address for purposes of this Agreement by giving written notice to the other party.

17. **Dispute Resolution.** If a claim or dispute arises out of or relates to the interpretation, application, enforcement, or performance of Services under this Agreement, both parties agree to attempt to resolve the claim or dispute (1) at a meeting between the principals within fifteen (15) days of receipt by either party of a notice and description of the dispute, and failing resolution (2) mediation in accordance with the AAA Construction Industry Mediation Rules then in effect within forty-five (45) days from service of written notice. If the claim or dispute cannot be resolved through mediation and unless otherwise mutually agreed, either party may file suit in an appropriate court in the state of the Contractor office entering into this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

WEST VALLEY CITY

Dennis J. Nordfelt, Mayor

ATTEST:

Sheri McKendrick, City Recorder

APPROVED AS TO FORM
WVC Attorney's Office

By: _____

Date: _____

Kelby Electric, Inc.

By: _____

Title: _____

STATE OF _____)
: ss.
COUNTY OF _____)

On this _____ day of _____, 2008, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he is the _____ [title] of **Kelby Electric, Inc.**, a corporation, and said document was signed by him on behalf of said corporation by authority of its bylaws or of a Resolution of its Board of Directors, and he acknowledged to me that said corporation executed the same.

Notary Public

EXHIBIT "A"

Kelby Electric, Inc.

7323 South 3420 West
West Jordan, UT 84084

Estimate

Date	Estimate #
7/28/2008	50

Name / Address
WEST VALLEY CITY 3600 SO. CONSTITUTION BLVD. #280 W. VALLEY CITY UT 84119

			Project
Description	Qty	Rate	Total
6200 S. 6300 W. INSTALL 9 WEST VALLEY COLLECTOR STREETLIGHTS. \$1,100.00 X 9 = \$9,900.00 PROVIDE & INSTALL 9 REGULATION J-BOXES \$200.00 X 9 = \$1,800.00 TRENCH NETWORK ON CORRIDOR \$8.00 X 2,000' = \$16,000.00 ROADBASE BACKFILL AS PER SPEC. \$3.00 X 2,000' = \$6,000.00 6-3 T.C. CABLE \$3.00 X 2,500' = \$7,500.00 PULL WIRE IN CONDUIT AND MAKE UP \$1.00 X 2,500' = \$2,500.00 ONE STRONG BOX METER SETUP \$3,000.00 TOTAL AMOUNT OF BID \$48,050.00 1/2 DUE UPON COMPLETION OF PREDIG REMAINING 1/2 DUE UPON COMPLETION OF PROJECT AUTHORIZED SIGNATURE _____		46,700.00	46,700.00
THIS PROPOSAL MAY BE WITHDRAWN, IF NOT ACCEPTED WITHIN 30 DAYS.		Total	